

## Internal Revenue Service

Number: **201301003**

Release Date: 1/4/2013

Index Number: 1362.04-00, 1361.05-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-114946-12

Date:

September 26, 2012

### LEGEND

X =

Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

State =

Dear :

This responds to a letter dated March 29, 2012, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

## FACTS

According to the information submitted and representations made, X was incorporated on Date 1 under the laws of State and elected to be treated as an S corporation effective Date 2.

On Date 3, Y, another S corporation, acquired shares in X, thus causing a termination of X's S corporation election. Y acquired additional shares in X on Date 4. On Date 6, after discovering the termination, Y acquired all of the outstanding shares of X that Y did not already own.

X represents that the termination of its S corporation election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X also represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided in § 1362(f) that may be required by the Secretary.

## LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for the year. Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of the Code – (i) a corporation which is a qualified subchapter S subsidiary (QSub) shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines QSub as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by an S corporation and the S corporation elects to treat the corporation as a QSub.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the taxable year for which the

corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation or a QSub, as the case may be, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation or a QSub, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation is treated as an S corporation during the period specified by the Secretary.

## CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 3 because X had an ineligible shareholder. We further conclude that the termination of X's S corporation election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation from Date 3 through Date 5, provide X's S corporation election was valid and not otherwise terminated under § 1362(d). We further conclude that X will be treated as a QSub effective Date 6 and thereafter, provided that X's QSub election is valid and not terminated under § 1361(b)(3)(C).

In addition, as a condition to this ruling, Y must, within 120 days from the date of this letter, elect to treat X as a QSub for federal tax purposes effective Date 6. The election should be made by filing Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center. A copy of this letter should be attached to the election.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or a QSub.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Joy C. Spies

Joy C. Spies

Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes